

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

Mishri Mal & Anr. Versus State of Rajasthan.

S.B. Criminal Appeal No.1113/2003 against
the judgment and order dated 08-10-2003
passed by the Additional Sessions Judge (Fast
Track) No.1, Sirohi, in Sessions Case No.48/03.

...

Date of Judgment: June 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the appellants.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. Rajesh Joshi, for the complainant.

BY THE COURT:

This criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the judgment and order dated 8-10-2003 passed by the Additional Sessions Judge (Fast Track), Sirohi (for short, "the trial Court" hereinafter) in Sessions Case No. 48/2003, whereby the trial Court convicted both the appellants for the offences under Sections 304-B and 498-A IPC and sentenced each of them to undergo ten years' rigorous imprisonment and a fine of Rs. 5000/-, in default of payment of fine further to undergo one year's rigorous imprisonment for the offence under Section 304-B, IPC; and three years' rigorous

imprisonment and a fine of Rs.3000/-, in default of payment of fine further to undergo six months' rigorous imprisonment. Both the substantive sentences were directed to run concurrently. Aggrieved by the judgment and order impugned, both the appellants have filed the instant appeal.

Briefly stated, the facts to the extent they are relevant and necessary for the decision of this appeal, are that at 7:30 AM on 12-11-2001, PW 13 Satya Narain lodged a written report EX.D/1 with Police Station, Swaroopganj alleging therein that his daughter Seema married to appellant No.2 Deepak Kumar on 28-5-2001 and she used to reside at her in-law's house with her husband appellant No.2, father-in-law appellant No.1, brother-in-law Sanjay Kumar and maid-servant PW 9 Karishma. It was alleged that his daughter was harassed by her father-in-law, husband and brother-in-law for dowry. On this report, the police ensued investigation, prepared the site inspection note, Panchnama-A-Haal-Lash, got the post-mortem conducted, took the photographs of the deadbody, arrested the appellants, recorded the statements of the witnesses under Section 161 of the Code and thereafter filed Challan against both the appellants for the offences under Section 498-A and 304-B, IPC. The trial Court framed charges for these offences against both the appellants, to which both the appellants denied. The prosecution adduced evidence by producing as many as 28

witnesses and the documents EX.P/1 to EX.P/36. Both the appellants made statements under Section 313 of the Code and denied the allegation and got exhibited the documents EX.D/1 to EX.D/5. The trial Court, vide impugned judgment and order convicted and sentenced both the appellants as noticed above. Hence this appeal.

I have heard learned counsel for the appellants and the Public Prosecutor appearing for the State as also the counsel appearing for the complainant.

It is contended by the learned counsel for the appellants that the deceased, prior to marriage, had been living at Mumbai and having lived life in a metropolitan city, was unable to adjust herself in the village, which caused her to commit suicide. Learned counsel submits that this fact has been stated by PW 8 Pawan, the brother of the deceased and PW 18 Sumitra, the sister of the deceased. Learned counsel further submits that the prosecution has failed to prove the demand of dowry. Even according to the prosecution evidence, at the time of marriage of the deceased with appellant No.2 Deepak Kumar, there was no demand of dowry and even after the marriage also, there is no specific evidence regarding demand of dowry. Learned counsel further submits that there is no evidence that the deceased was subjected to cruelty soon before her death in connection with demand of dowry. Learned counsel further

submits that even assuming the prosecution case as true that the cash amount was demanded, though it has not been made specific which of the appellants demanded the cash on account of loss in business and, therefore, any such demand cannot be said to be a demand of dowry. Learned counsel has relied on the decision of the Supreme Court in *Satvir Singh & ors. Vs. State of Punjab & Anr.*, 2002 SCC (Cri.) 48; and a decision of the Bombay High Court in *Aftab Alam Abdul Hamid Ansari Vs. State of Maharashtra*, 2006 (1) Crimes 172. Learned counsel further submits that to attract the provision of Section 304-B IPC, there has to be an evidence to the effect that soon before the death of a woman, she was subjected to cruelty or harassment by her husband or any relative of her husband for and in connection with demand of any dowry. In the instant case, according to the learned counsel for the appellants, there is absolutely no evidence that soon before her death, deceased Seema was subjected to cruelty or harassment by either of the appellants in connection with demand of dowry. Learned counsel further submits that in the FIR EX.P/26 and the written report EX.D/1, apart from the appellants, the names of Sanjay, Karishma and Rambabu were also mentioned as accused in the case, however, during investigation, the police did not find any case against them and filed the Challan only against the appellants. Learned counsel has relied on a decision of the

Hon'ble Supreme Court in Gurucharan Kumar & Anr. Vs. State of Rajasthan, 2003 SCC (Cri.) 675; a decision of Madras HighCourt in Ranganathan Vs. Veerapandian & ors., 1996 Cri .L.J. 540; and a recent decision of the Hon'ble Supreme Court in Harjit Singh Vs. State of Punjab, (2006) 1 SCC (Cri.) 417.

Learned Public Prosecutor and the counsel for the complainant submit that the death of deceased Seema occurred otherwise than in normal circumstances within seven years of her marriage with appellant No.2 and there is evidence of the father, sister, mother and brother of the deceased to the effect that the deceased was being harassed by both the appellants and three others in connection with demand of cash and, therefore, according to them, the prosecution has proved its case against both the appellants beyond reasonable doubt. Learned Public Prosecutor and the counsel for the complainant further contended that in the Panchnama-A-Lash, the Panch witnesses noticed number of injuries on the person of the deceased. Though in the post-mortem report, only an abrasion on nose has been shown and also stated by the doctor, but the Panch witnesses noticed that there were numerous injuries on the person of the deceased, which according to them show that the deceased was subjected to cruelty by the appellants. They have relied on a decision of the Hon'ble Supreme Court in Smt. Shanti & Anr. Vs. State of Haryana, AIR 1991 SC 1226.

I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties. I have carefully gone through the judgment impugned and scrutinized, scanned and evaluated the evidence on record.

PW 13 Satya Narain, the father of the deceased, lodged the written report EX.D/1, on the basis of which the police recorded the FIR EX.P/26 against both the appellants, Sanjay Kumar, Karishma, Rambabu and others.

PW 13 Satya Narain stated that on 11-11-2001, at 7:00 PM, he received a telephonic call from one Babu Bhai, on which he went to Babu Bhai's house and was informed that his daughter had consumed something and was asked to go to Palanpur. He, along with PW 12 Radhey Shyam went to the private clinic of Dr. Rajendra Agrawal, where he found his daughter's deadbody in a Indica car. Thereafter they came back and again went to Swaroopganj where they noticed the deadbody of his daughter lying in the mortuary having injuries on her forehead, cheeks and neck. He stated that Seema has been murdered for dowry in her in-laws' house. He categorically stated that his daughter Seema has been murdered by her husband, father-in-law, brother-in-law and the maid-servant Karishma. In cross-examination, he stated that the marriage was performed peacefully and there was no dispute of dowry. Whatever the articles were given at the time of marriage, were

given at his own accord. However, he admitted that in his previous statement EX.D/4, he did not state regarding demand of dowry for a sum of Rs.25,000/-, television, gold and silver ornaments.

PW 4 Smt. Neema, the sister of the deceased, stated that at the time of marriage of her sister Seema, the gold jewellerys, colour-television, washing machine, silver ornaments, cash, watch, almirah etc. were given. She stated that whenever deceased Seema used to talk to her on telephone, she used to state about taunting her for the demand of dowry by her husband, father-in-law and brother-in-law. However, she stated that the marriage was peaceful and there was no talk with regard to giving and taking of anything at the time of marriage. She stated that none of the accused made a demand for dowry and whatever they gave were given out of their sweet-will. She further stated that the deceased did not inform which of the appellants demanded cash. She admitted that when for the first time the deceased came to Iqbalgarh, she did not disclose anything to her; however, lastly when she talked with the deceased on the eve of Karwa-Chouth when she was at Iqbalgarh, she stated about the demand of dowry. She could not give the date when she had earlier talked with the deceased once or twice on telephone; however, stated that on telephone, the deceased informed that her in-laws are demanding cash and

could not say how much amount and by whom it was demanded. She categorically stated that she did not disclose this fact to anyone except her husband. Her husband has not been produced as a witness. She admitted that she has not stated this fact to the police that the deceased was being harassed for demand of cash amount.

PW 6 Smt. Sushila, the mother of the deceased, stated that both the appellants and one Sanjay, the brother-in-law of the deceased, used to harass the deceased for dowry. Her daughter Seema used to disclose this fact to her; however, they were not in a position to give anything more. She stated that eight days before the occurrence, both the appellants came to their house to take her daughter Seema. At the time of departure, she wanted to do Tilak on the forehead of her son-in-law, i.e. appellant No.2, to which he refused and stated that it may be done to his father, the appellant No.1. She stated that in her previous statement EX.D/2, there is no mention regarding demand of gold and silver ornaments. However, she stated that the deceased used to say that the appellants demanded money, but she could not say which of the appellants demanded money and to what extent. On being confronted with her previous statement EX.D/2 wherein it has not been mentioned that the appellants used to demand money, she stated that in place of the word "money", the word "dowry" has been wrongly written

by the police.

PW 7 Hema, the another sister of the deceased, stated that both the appellants and deceased's brother-in-law Sanjay used to demand dowry and this fact was disclosed by Seema to her. She stated that eight days before the occurrence, the deceased came to Iqbalgarh and informed her that her husband, brother-in-law and father-in-law are harassing her for dowry. The deceased also informed that her father-in-law had illicit relations with maid-servant PW 9 Karishma and his partner's wife. Deceased Seema disclosed this fact to her husband and brother-in-law, upon which she was rebuked by them. Thereafter there had not been good relations of the deceased with her in-laws' members. When the appellant came to take Seema while she was at her parent's house, they did not take even water and even objected for Tilak. However, she could not state which of the appellants, on what date and in what terms demanded the dowry and admitted that she did not disclose this fact to any one at Iqbalgarh that her sister Seema had been harassed for demand of dowry. She stated that after Karwa Chouth also, she did not disclose this fact to her mother and father but informed them only after the death of Seema. She could not state as to what had been demanded in dowry from the deceased. She stated that in her previous statement to the police EX.D/3, she did not state that the appellants were

demanding gold, silver or cash. However, she stated that the deceased told her that the appellants were demanding cash. On being confronted with her previous statement EX.D/3, she stated that in EX.D/3, it has not been mentioned that the deceased informed her personally. She stated that the deceased was a beautiful woman, having passed B.A. Examination and at Mumbai, she did Beauty-Parlour's Course and used to undertake the work of beauty-parlouring at her parents house in Mumbai. She stated that deceased's husband Deepak Kumar was VII or VIII passed whereas the deceased was B.A. She stated that at the in-laws' house of the deceased, there used to be family quarrel which was disliked by the deceased. She categorically stated that except the family quarrel at in-laws' house, there was absolutely no other problem to her.

PW 8 Pawan, the brother of the deceased, stated that her sister deceased Seema informed him that her husband, father-in-law and brother-in-law used to say that there has been a loss in the business and she should bring money from her parents. A day before Karwa-Chouth, he brought Seema from Swaroopganj to Iqbalgarh. On the second day of Karwa-Chouth, the appellants came to take her back and as per the customs, when his mother wanted to do Tilak on the forehead of appellant No.2, he refused and stated that Tilak may be done to his father, the appellant No.1. He stated that his sister Seema

has been murdered by the appellants for dowry. In the cross-examination, he stated that his sister was B.A. Passed; she was a beautiful woman, brought-up in Mumbai, did Diploma Course in Beauty-Parlour and she was a lady of modern-thoughts whereas the appellants are the orthodox Marwari. He stated that deceased Seema had no liking for her in-laws and for that reason, she often used to remain depressed and annoyed. The mother-in-law of the deceased used to remain sick and, therefore, for these reasons, the deceased was not happy in her in-laws' house. He categorically stated that for these reasons, deceased Seema found her future in dark and was disappointed with her life. He also stated that the appellants told the deceased that they have suffered a loss in the business and asked her to bring some money from her parents. However, he stated that which of the appellants demanded money and to what extent, was not disclosed to him by the deceased. He categorically stated that he does not know as to what had happened to the deceased soon before her death.

PW 12 Radhey Shyam, the real uncle of the deceased, did not support the prosecution case and turned hostile.

PW 18 Smt.Sumitra stated that when she was called at the house of the appellants, she noticed Seema sleeping and on being asked her as to what happened, Seema stated that she

was not feeling well. When she was asked as to what had happened, the deceased did not disclose anything. Thereafter they called a doctor, who said that since no proper facility in the hospital at Swaroopganj, therefore the deceased may be taken to Palanpur, thereafter the deceased was taken to Palanpur by the husband of PW 18, appellants Mishri Lal and Deepak. Next day, the deadbody of Seema was brought. She stated that the deceased used to say that she wanted to live in a free-life style and was feeling suffocation at Swaroopganj. Appellant No.1 Mishri Mal used to keep Seema as his daughter. This witness did not support the prosecution case and, therefore, declared hostile. This witness has stated that deceased was her sister-in-law (Nanad) in relation. She stated that Seema did not inform her regarding any harassment by her in-laws.

The other witnesses produced by the prosecution are the Panch witnesses to the Panchnama EX.P/1, namely PW 1 Subhash Chandra, PW 2 Om Prakash, PW 5 Harish Kumar, PW 22 Prakash Chandra and PW 23 Kamlesh.

PW 1 Subhash Chandra stated that the police prepared Panchnama-Lash EX.P/1 in his presence. He noticed injures on the fore-head, on the base of nose, left cheek, left shoulder, teeth-bite injuries on the right chest, injuries on the thighs and also on the sole of the legs.

PW 2 Om Prakash stated that the police prepared

Panchnama EX.P/1 in his presence and he noticed injuries on the right side of the face, contusions on the hands as also on the sole of the legs of the deceased. He is also a witness to the Furd-Surat-Haal-Lash EX.P/2 and the recovery of plastic bottles EX.P/13 and EX.P/14. However, he admitted that prior to the post-mortem of the deceased, he made a statement to the police under Section 161 of the Code, in which he has not stated about the injuries noticed on the deadbody of the deceased.

PW 5 Harish Kumar is a witness to the Panchnama-Lash EX.P/1 as also to the Furd Lash-Supurdgi EX.P/5. However, he has not given details of any injury but stated that in the opinion of the Panch witnesses, the death of the deceased was due to the assaults and by administering her something.

PW 22 Prakash Chandra is a witness to the Panchnama-Lash EX.P/1 and stated that at the time of preparing the Panchnama-Lash, he noticed injuries on her neck, head, hand, chest and soles of the legs etc. of the deceased. He stated that the deceased had one head injury which appeared to have been caused by a stick and on the chest, there were teeth-bite injuries. The injuries were uncountable, may be ten, twenty or twenty-five.

PW 23 Kamlesh is a Panch-witness to the Panchnama-Lash EX.P/1 and stated that on the deadbody of the deceased, there were injuries on the fore-head, cheeks, soles of

the legs, arms and nose.

PW 3 Dr. Dau Lal Chauhan, who conducted the post-mortem on the deadbody of the deceased vide EX.P/7, stated that he was one of the members of the Medical Board comprising of himself, Dr. K.P. Singh and Dr. Chandra Kamal Sharma. On external examination, he noticed one abrasion 1 x 1 cm on the base of the nose which was ante-mortem in nature. However, the Medical Board did not find any bruise on any part of the deadbody of deceased Seema. The Medical Board was of the opinion that the cause of death of Seema is poisoning and in order to ascertain the type of poison, viscera were sent for FSL through local police. The FSL report EX.P/36 reveals that on chemical examination, portions of viscera (1-8) and colourless liquid (9) from packets marked "1", "2", "3" and "4" respectively gave positive tests for the presence of Chlorpyriphod and cypermethrin insecticides. He categorically stated that there were no injuries on the person of the deceased on her ribs, arms, soles of the legs. However, he stated that there was a single injury (abrasion) on the base of the nose and except that, there was no injury on the deadbody of the deceased. He also stated that the duration of the abrasion on the base of the nose has not been written in the post-mortem report as the abrasion was superficial in nature and it could be caused by scratching or self-inflicted.

PW 9 Karishma, the maid-servant, stated that she had never seen either of the appellants inflicting any injury to the deceased. She took the tea to the bed-room of the deceased and saw that the deceased was perturbed. However, she was alive but mum. At that time, except her, there was nobody in the home. Thereafter the neighbours were called. A telephonic call was given to appellant No.1 Mishri Lal at his factory and thereafter both the appellants came from the factory. Seema was taken for treatment to Abu Road in a vehicle. On the date of the occurrence, there was no quarrel at the home. However, since this witness did not support the prosecution case, therefore, she was declared hostile. She categorically denied that in her presence the appellant No.1 used to harass the deceased. She stated that the deceased used to say that she was not happy at the small village as there is no opportunity for outing and except this, she had no problem.

PW 10 Bhanwar Lal, PW 11 Prahlad Singh and PW 13 Radhey Shyam did not support the prosecution case and turned hostile. Likewise, PW 14 Suresh Bhai, PW 15 Sita Ram, PW 16 Kamlesh, PW 17 Mukesh Kumar and PW 18 Smt. Sumitra, who are neighbours of the deceased and the appellants, did not support the prosecution case and turned hostile. However, they stated that the deceased was not happy in living in the small village as she was a lady of free-thoughts.

On close scrutiny of the statements of the prosecution witnesses, it is clear that there are two type of evidence on record. One is that of the father, mother, brother and sisters of the deceased, who stated that the deceased was being harassed by the appellants in connection with demand of money as the appellants allegedly suffered loss in the business. Though initially the case set up by the prosecution was that the deceased was being harassed in connection with demand of dowry but during trial of the case, the prosecution has shifted the case from "demand of dowry" to "demand of money" on account of the loss allegedly suffered by the appellants in their business. There is evidence of these witnesses to the effect that they noticed injuries on the person of the deceased. The statements of these witnesses, to some extent, finds support from the statements of the Panch witnesses to the Panchnama-Lash EX.P/1, who stated that at the time of preparation of Panchnama-Lash, they noticed certain injuries on the person of the deceased as stated in their statements noticed above. However, the Panch witnesses, in their statements, are not consistent and there are various contradictions with regard to part of body and number of injuries on the person of deceased.

As against this, there is evidence of PW 3 Dr. Dau Lal Chauhan, who was one of the Members of the Medical Board which conducted the post-mortem on the dead-body of the

deceased and stated that on external examination of the deadbody, he did not notice any injury except an abrasion on the base of the nose 1 x 1 cm in size, which was ante-mortem and superficial in nature and could be caused by scratching or self-inflicted. He categorically stated that on careful examination of the deadbody of the deceased, except the abrasion 1 x 1 cm on the base of the nose, no other injury was found on the deadbody of the deceased. The post-mortem of the deceased was conducted by three doctors. The photographs of the deadbody EX.P/16 to EX.P/18 were snapped by PW 24 Anna Ram, who stated that when he snapped the photographs of deadbody of the deceased, he did not notice any injury on her person; however, stated that he noticed vide Ex.P/16 at place 'X' an injury on the nose of the deceased which was an abrasion. The photographs EX.P/16 and EX.P/18 are only of the face and except an injury on the base of the nose, no other injury is visible. EX.P/17 is the photograph of the legs, which also does not show any injury on the sole. In the Panchnama EX.P/1, it is not stated as to what type of injuries had been suffered by the deceased. However, the Panchas were of the opinion that the cause of death of the deceased was injuries on her person and forcibly administering poisonous substance to her. In EX.P/2 Furd-Surat-Haal-Lash, it has been mentioned that there is injury on the upper part of the nose having slight clotting of blood. The

hands of the deceased were designed by Henna. However, it has been stated that on the right cheeks, left shoulder, both the hands above elbow, right ribs, soles of both the legs and hands of the deceased, there were injuries, though injuries stated by Panch witnesses do not find corroboration from the medical evidence, i.e. post-mortem report EX.P/7 and statement of PW 3 Dr. Dau Lal Chauhan as also from the statement of PW 24 Anna Ram who snapped the photographs EX.P/16 to EX.P/18.

From the statement of PW 13 Satya Narain, it appears that when for the first time he saw the deadbody of his daughter in the car, he did not notice any injury. However, when Panchnama-Lash was prepared, he noticed the injuries on the forehead, cheeks and neck of the deceased. The other Panch Witness PW 2 Om Prakash stated that he saw injuries on the right side of nose, contusions on hand and the soles. The another Panch witness PW 5 Harish has not given any description of the injuries. PW 22 Prakash Chandra stated that he noticed injuries on the neck, hands, cheeks, soles and also on the head, which according to him have been caused by a stick and on the chest and injuries were uncountable, may be 10, 20 or 25. PW 23 Kamlesh stated about injuries on the forehead, cheeks, soles, arms and nose of the deceased. The injuries stated by these witnesses do not find corroboration from the post-mortem report EX.P/7 and the statement of PW 3 Dr. Dau Lal Chauhan, who

was one of the Members of the Medical Board, as also from the statement of PW 24 Anna Ram and the photographs EX.P/16 to EX.P.18. It is relevant to note here that the autopsy on the deadbody was conducted by a Medical Board comprising of three doctors and they did not notice any external injury except an abrasion on the base of the nose measuring 1x 1 cm, which also, according to the medical board, could be by scratching or self-inflicted as it was superficial in nature. The statements of Panch witnesses with regard to the alleged injuries are contradictory. None of the Panch witnesses is consistent as to on which part of the body the deceased suffered the injuries. Had there been 25 injuries on the deadbody of the deceased, as stated by PW 22 Prakash Chandra, there was no reason for the three doctors, who were members of the Medical Board, as also PW 24, the Photographer, who are independent persons, having not noticed these injuries. These Panch witnesses are relatives of the deceased. On close scrutiny of the statements of these witnesses, in my view, these witnesses have given a very exaggerated version so far as injuries are concerned and they being highly interested persons, their evidence is wholly unreliable to this extent and, therefore, it would not be safe to rely on the statements of such Panch witnesses, more particularly when the photographs of the deceased produced on record do not show any injury except the injury on the base of

the nose of the deceased, which too is of very minimum dimension and appears to be superficial and may be caused by scratching or self-inflicted as stated by PW 3 Dr.Dau Lal, who was one of the members of the Medical Board which conducted the post-mortem on the deadbody of the deceased.

So far as the deceased having been subjected to cruelty soon before her death in connection with demand of dowry is concerned, there is no evidence that soon before her death, the deceased was subjected to cruelty in connection with demand of dowry. On close scrutiny of the statements of PW 13, the father, PW 6 the mother, PW 7 sister and PW 8 the brother of the deceased, it is clear that in their statements before the Court, they did not state that the deceased was subjected to cruelty soon before her death in connection with demand of dowry. On the contrary, they are consistent in their statements that the appellants alleged to have suffered loss in their business and, therefore, asked the deceased for bringing money. The Hon'ble Supreme Court in *Satvir Singh & ors. Vs. State of Punjab & ors.*, 2000 SCC (Cri.) 48, held that the word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an

unending period. But the crucial words are "in connection with the marriage of the said parties." This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry."

A Division Bench of Bombay High Court, in *Aftab Alam Abdul Hamid Ansari Vs. State of Maharashtra*, 2006 (1) Crimes 172, held that demand of money to set up in business cannot be construed to be a demand of dowry. In that case, the appellant therein wanted some money to set up himself in business. The Bombay High Court held that such demand has nothing to do with dowry. Considering the provisions of Section 113-B of the Evidence Act, which provides for drawing of presumption about causing dowry death, the Court held that for drawing such presumption, it has to be shown that soon before death of the woman, she had been subjected by such person to cruelty or harassment for, or in connection with demand for dowry. In that case, there was a demand of money to set up the business which was not considered to be the demand of dowry.

Keeping in view of the decision of the Hon'ble

Supreme Court in *Satvir Sign & ors. Vs. State of Punjab & ors.* (supra) and a decision of the Bombay High Court in *Aftab Alam Abdul Hamid Ansari Vs. State of Maharashtra* (supra), from the evidence on record, it has not been established that the deceased was subjected to cruelty soon before her death in connection with demand of dowry, as from the evidence produced by the prosecution, the demand of dowry has not been established beyond reasonable doubt. There is no evidence that soon before the death, the deceased was subjected to cruelty in connection with demand of dowry. However, from the statement of PW 4 Neema and PW 7 Hema, it has been established that the deceased was being taunted by her in-laws members and there used to be a family quarrel in the in-laws' house and when the appellants came to Iqbalgarh to take the deceased back, her husband appellant No.2, when offered Tilak, refused and stated that the Tilak may be done to his father, appellant No.1 and thereby causing mental cruelty to the deceased. Therefore, the prosecution has established that the deceased was subjected to cruelty at her in-laws house. However, there is no evidence that she was subjected to cruelty soon before her death and, therefore, the very essential ingredients of the offence under Section 304-B, IPC are not made out.

PW 8 Pawan, the brother of the deceased, stated that the deceased was a graduate and a beautiful woman,

brought-up at Mumbai, did the beauty-parlour course and was a lady of modern thoughts whereas the appellants are orthodox Marwaris and, therefore, the deceased did not like her in-laws and for that reason she often used to remain depressed and annoyed. Similar is the statements of PW 7 Hema, the sister of the deceased, who stated that there used to be family quarrel in the in-laws house, which was disliked by the deceased and except the family-quarrel in the in-laws house, there was absolutely no problem to the deceased. From the statements of PW 7 and PW 8, it is more than clear that the deceased was brought-up in the metropolitan city of Mumbai, having academic qualification upto Grauduation, did beauty-palour course and a lady of modern thoughts but married in a village like Swaroopganj and did not find herself adjusted in a village atmosphere and environment which led her to commit suicide.

In Gurucharan Kumar & Anr. Vs. State of Rajasthan (supra), the Hon'ble Supreme Court, while considering the letter written by the deceased to her mother, held that the deceased was trying to adjust herself according to the atmosphere in her matrimonial home. She has concluded the letter by saying that she should not talk to anyone about these things, since she does not want anyone to get an opportunity to say anything. In the said letter, there was no reference to any demand of dowry made by anyone; on the contrary, there is acknowledgement of

the fact that in her matrimonial home she was the recipient of abundant love and affection. The Supreme Court held that the only indication, if at all, is about her finding it difficult to adjust in the new surroundings for which she found herself guilty for entertaining such feelings. In the letter, the deceased referred to the freedom that she enjoyed in her parental home but now feels frustration because she cannot do all that she used to do in her parental home. On these premises, the Hon'ble Apex Court held that the deceased must have committed suicide as she was unable to adjust herself in the changed surroundings at her matrimonial home being a highly emotional person and, therefore, held that the evidence on record, in that case, does not suggest that the deceased was subjected to harassment or cruelty by her husband, father-in-law or mother-in-law, for or in connection with demand of dowry.

In *Ranganathan Vs. Veerapandian & ors.* (supra), the Madras High Court, on evaluating the facts of the case before it, held that the possibility of suicide due to frustration of life cannot be ruled out and in absence of basic element of "demand of dowry", presumption under Section 113-B of the Evidence Act was not called for.

As against this, learned Public Prosecutor has relied on a decision of the Hon'ble Supreme Court in *Smt. Shanti & Anr. Vs. State of Haryana* (supra), wherein the Apex Court held

that Section 113-B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand of dowry, then the Court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in Section 498-A and as per that section "cruelty" means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry."

Thus, from the evidence of the prosecution witnesses PW 7 and PW 8, it has been established that the deceased was not able to adjust herself in a village atmosphere being a brought-up lady at Mumbai, having Graduation and Beauty-Parlour Course and a lady of modern thoughts, whereas her in-laws were orthodox Marwaris; more so there being family quarrel at her in-laws house which was not liked by her and in these surrounding circumstances, the deceased was not happy

with the environment at her in-laws house and, therefore, being a perturbed lady, put an end to her life. In this view of the matter, the conviction and sentence of the appellants for the offence under Section 304-B, IPC cannot be sustained and liable to be set-aside.

In the result, the appeal is partly allowed. The judgment and order impugned dated 8-10-2003 passed by the Additional Sessions Judge (Fast Track) No.1, Sirohi in Sessions Case No.48/2003, to the extent of convicting and sentencing appellants Mishri Mal and Deepak Kumar for the offence under Section 304-B, IPC is set aside and both the appellants are acquitted of the offence under Section 304-B, IPC.

The conviction and sentence of fine awarded to both the appellants for the offence under Section 498-A, IPC are maintained; however, the substantive sentence of imprisonment awarded to the appellant Mishri Mal is reduced to the period of imprisonment already undergone by him. Appellant No.1 Mishri Mal is on bail and his bail bonds stand discharged. Appellant No.2 Deepak Kumar is in jail. He has already undergone the sentence awarded to him for the offence under Section 498-A, IPC and, therefore, he be set at liberty forthwith, if not required in any other case.

(H.R. PANWAR), J.